

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED
January 28, 2000
Cecil Crowson, Jr.
Appellate Court Clerk

RHONDA PRITCHETT,
Plaintiff-Appellee,

Vs.

BREWER, KRAUSE & BROOKS
and AMERICAN MINING INSURANCE
COMPANY,

Defendant-Appellant.

) Davidson Chancery
) No. 95-554-I

) Hon. Irvin H. Kildcrease, Jr., Chancellor

) M1998-00715-SC-WCM-CV

) Affirmed

JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs are taxed to the defendants-appellants and their surety for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Birch, J., not participating

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL
AT NASHVILLE
(MAY 27, 1999 SESSION)

RHONDA PRITCHETT,)

Plaintiff/Appellee,)

v.)

Chancellor.)

BREWER, KRAUSE & BROOKS)

and AMERICAN MINING)

95-554-I)

INSURANCE COMPANY)

M1998-00715-SC-WCM-CV)

Defendant/Appellant,)

DAVIDSON CHANCERY

Hon. Irvin H. Kilcrease, Jr.

No .

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**Cecil Crowson, Jr.
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For Appellants

Appellee

For

Luther E. Cantrell, Jr.
Nashville, TN

Larry R. Williams
Nashville, TN

MEMORANDUM OPINION

Members of Panel:

Justice Adolpho A. Birch, Jr.
Henry D. Bell, Special Judge
Hamilton Gayden, Jr., Special Judge

AFFIRMED

Gayden, Judge

MEMORANDUM OPINION

_____This workers compensation appeal has been referred to the Special Workers Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The Employer's insurer insists that the trial court erred in finding that the plaintiff appellee suffered an accident as defined under T.C.A. 50-6-102(5). The Appellant further asserts that the trial court committed error by not certifying its order regarding compensability as final or in refusing to allow a discretionary appeal. As discussed below the panel has concluded the award should be affirmed.

The question of whether the injury sustained by the appellee was caused by an accident as defined under T.C.A. 50-6-102(5) is a question of fact and review is therefore de novo upon the record of the trial court accompanied by an presumption of correctness of the findings of the facts unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225 (e)(2).

The employee or claimant, Pritchett, 24 years old at the time of the incident, was employed by the law firm of Brewer, Krause, and Brooks as a runner .

On February 23, 1994 the claimant was performing her routine duties of delivering various documents around the downtown area when she suddenly began experiencing pain in her left knee and was unable to put any weight on it. The claimant reported the incident the next day to her supervisor. The plaintiff was evaluated and treated by Dr. J. W. Thomas Byrd an orthopedic surgeon on February 28, 1994. Dr. Byrd's diagnosis was inflammation of the knee which he attributed to her duties as a runner. Dr. Byrd rejected the notion that the injury was idiopathic since he identified claimant's work as a cause. The knee pain persisted and Dr. Byrd eventually performed orthoscopic surgery on Pritchett on May 1, 1997. Dr. Byrd last saw the claimant on August 29, 1997. He concluded that she had reached maximum medical recovery.

On December 11, 1997, Dr. Gaw, an orthopedic surgeon, conducted an independent examination of Pritchett. He determined that Pritchett suffered muscle atrophy in her thigh and concluded that she had a 7% permanent partial impairment to the lower extremity. Dr. Byrd later agreed with these findings.

The appellant employer refused to authorize reasonable and necessary medical treatment and on December 1, 1995 claimant filed a Motion to Compel Medical Treatment. The motion was

overruled and the case was bifurcated on the issue of compensability. The chancellor found that the claimant had suffered a compensable gradual work related injury which the appellants were ordered to pay benefits for including temporary total disability and medical treatment

The appellant argues that the claimant's injury is not compensable because it is idiopathic. Dr. Bryd, however, specifically stated that the injury was not idiopathic because it was caused by her duties as a runner. The appellant further asserts that no specific event caused the claimant's injury, therefore, it was not compensable. This reasoning, however, was resoundly rejected by this court in Conroy v. Carter Automotive Products Corp, 640 S.W.2d 831 (Tenn.1982). In Conroy it was established that injury by accident could occur gradually.

The second issue which the appellant put forth for review by this court was whether the trial court erred in refusing to make the judgement regarding compensability a final one or in refusing to allow a discretionary appeal. This argument is moot because the claimant's injury was found to be an accident.

The claimant asked this court to sanction the Appellant for filing a frivolous appeal based on the fact that the appellant employer presented no proof or expert testimony at anytime during the case. The claimant further asserts that this appeal has no basis. After careful consideration by the panel we have decided not sanction the appellant. However, this appeal came dangerously close to being deemed frivolous by this panel and were it not for inconsistencies in the medical testimony sanctions would have been issued.

For the above reasons, the judgement of the trial court is affirmed. Cost on appeal are taxed to the defendants.

Hamilton Gayden, Special Judge

CONCUR:

Adolpho A. Birch, Jr., Associate Justice

Henry D. Bell, Special Judge

